IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

M.A.C.A.No.810 of 2003(C)

O.P.(M.V) NO.149/2000 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, NORTH PARAVUR.

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APPELLANT/3RD RESPONDENT:-

NATIONAL INSURANCE COMPANY LTD.,
DIVISIONAL OFFICE, TRIVANDRUM - 14,
TRIVANDRUM DISTRICT.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS: CLAIMANT AND RESPONDENTS 1 & 2:-

1. BABU P.P., S/O. PURUSHOTHAMAN,
   PUZHAKAREDATHU HOUSE, MUTTINAKAM, VARAPUZHA POST,
   PRAVUR TALUK, ERNAKULAM DISTRICT.

2. MANAGING DIRECTOR,
   KERALA STATE ROAD TRANSPORT CORPORATION,
   THIRUVANANTHAPURAM.

3. S. SAKKTHIDHARAN NAIR,
   JKS/O. SUKUMARAN NAIR, "SARASALAYAM",
   EDAKKODU POST, PANCHACHAL VILLAGE,
   NEYYATTINKARA, THIRUVANANTHAPURAM DISTRICT.

R1 BY ADV. SRI.G.BALAMURALEEDHARAN (PARAVUR)
SRI.MATHEWS V.JACOB (PARAVUR)
SRI.N.T.NANDAKUMAR (PARAVUR)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 23/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

M.A.C.A.No.810 of 2003-C

Dated, this the 23rd day of March, 2007

JUDGMENT

The 3rd respondent-Insurer in O.P.(M.V.).No.149 of 2000 on the file of Motor Accidents Claims Tribunal, North Paravur is the appellant. The appellant has filed this appeal challenging an award passed by the Tribunal by which the appellant was directed to pay the compensation.

2. The 1st respondent filed the Original Petition claiming compensation impleading the Managing Director of Kerala State Road Transport Corporation, one Sakthidharan Nair and the appellant alleging that at about 8.15 P.M. on 20.8.1999 while he was attempting to alight from a K.S.R.T.C. bus bearing registration No.KL-15/2877 (TN 804), the driver started moving the vehicle in a rash or negligent manner. The 1st respondent fell down from the foot-board and sustained injuries. It is alleged that the vehicle was insured with the appellant. The appellant raised a contention that the vehicle bearing registration No.KL-15/2877 (TN 804) was not covered with a valid policy of insurance. The Tribunal found that the accident occurred due to

the negligence of the driver of the K.S.R.T.C. bus and the 1st respondent is entitled to get Rs.20,750/- as compensation. The appellant was directed to pay the compensation. Challenging that award, this appeal is filed.

3. The contention raised by the appellant is that the vehicle KL-15/2877 (TN 804) was not insured by the Company. Exhibit B3 list attached to the policy shows that the corresponding registration number of bus bearing No.TN 804 is KL-15/2878. The Tribunal found that the number stated could be a mistake and the Insurer is liable.

4. The learned counsel appearing for the appellant has strenuously argued before me that the oral and documentary evidence adduced by the appellant would conclusively show that the vehicle bearing registration No.KL-15/2877 (TN 804) was not insured with the appellant. In Exhibit B5, the K.S.R.T.C. had also admitted that the vehicle bearing registration No.KL-15/2877 was not covered by a valid policy of insurance. The Tribunal took a view that the vehicle bearing No.TN 804 is covered with a valid policy of insurance and the registration number noted could be a mistake. According to the counsel for the Insurance, it is equally

possible that the mistake might have occurred while noting the TN number. The K.S.R.T.C., being the owner, could have produced positive evidence to prove the identity of the vehicle involved in the accident. Unless it is proved that the vehicle involved was covered with a valid policy of insurance issued by the appellant, the appellant cannot be made liable.

5. I do not find any reason to interfere with the finding of fact that the 1st respondent sustained injuries and he is entitled to get so much of compensation as awarded by the Tribunal. But, what exactly was the number of the vehicle involved is material. I am of the view that it is only just and proper that a reasonable opportunity is given to all parties concerned to prove the identity of the vehicle involved in the accident. So, that part of the award alone is liable to be set aside. The matter is to be remanded.

In the result, the appeal is partly allowed. The findings of the Tribunal that the accident occurred due to the negligence of the 3rd respondent-driver and that the 1st respondent is entitled to get Rs.20,750/- as compensation are hereby confirmed. But, the finding of the Tribunal that the appellant-Insurer is liable alone is set aside and the matter is remanded to the Tribunal for

the limited purpose of finding out whether the compensation is to be paid by the K.S.R.T.C. or by the Insurer. There will be a direction to the Tribunal to try and dispose of that issue as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment. The parties shall appear before the Tribunal on 10.05.2007. I.A.No.2951 of 2003 shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-